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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,943	10/31/2003	Gene Stauffer		5958

7590 06/29/2004  
Law Office of Adam H. Jacobs  
Suite 726  
1904 Farnam Street  
Omaha, NE 68102

EXAMINER GONZALEZ, MADELINE	
ART UNIT 2859	PAPER NUMBER

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/700,943	Applicant(s) STAUFFER ET AL.	
	Examiner Madeline Gonzalez	Art Unit 2859	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Buck et al. (U.S. 2,022,756) [hereinafter Buck].

Buck discloses a linear measuring device, as shown in Fig. 1, having:

- a tape housing 2 having an outer surface, a tape outlet opening and inner volume;
- a generally semi-flexible measuring tape 1 housed within said tape housing 2 in a generally spiral configuration with an outer end extendable through said tape outlet opening;
- an extendable generally flat planar rear tail 5 having an outer end and an inner end, said rear tail 5 movably mounted on said tape housing 2 generally opposite said tape outlet opening, said rear tail 5 operative to project outwards from said tape housing 2;

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- a generally flat planar forward hook (tongue) having inner and outer ends, said inner end of said forward hook (tongue) mounted on said outer end of said measuring tape 1 with said forward hook (tongue) extending forwards therefrom;
- at least two sets of measurements displayed on said measuring tape 1, an outer measurement of said at least two sets of measurements displaying the total extended distance of said measuring tape 1 from said outer end to said tape outlet opening, an inner measurement 10 of said at least two sets of measurements displaying the total distance between said outer end of said rear tail 5 and said outer end of said forward hook (tongue) such that outer and inner measurements are simultaneously displayed in said measuring tape;
- wherein said inner measurement 10 further comprises the length of said rear tail 5 plus the length of said forward hook (tongue) plus the length of said tape housing 2 between said tape outlet opening and the connection of said rear tail 5 to said tape housing 2 plus the total extended distance of said measuring tape 1 from said outer end to said tape outlet opening whereby the total distance between the outer end of said rear tail 5 and said outer end of said forward hook (tongue) is shown by said inner measurement free of addition of the individual length measurements of each of the rear tail 5, forward hook (tongue), tape housing 2 and measuring tape 1; and
- wherein said inner end of said rear tail 5 is retractably mounted within said tape housing 2 with said outer end of said rear tail 5 extending partially outwards from said tape housing 2 when said rear tail 5 is housed within said tape housing 2 such that said outer end of said rear tail 5 may be engaged to withdraw said rear tail 5 from

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said tape housing 2 thereby moving said rear tail 5 into an extended position generally parallel with said outer end of said measuring tape 1 in the opposite direction therefrom.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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5. Claims 1-3, 5-7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosman (U.S. 4,977,684) in view of Betz (U.S. 3,087,251) and Buck (U.S. 2,022,756).

Mosman discloses a linear measuring device, as shown in Fig. 1, having:

- a tape housing 12 having an outer surface, a tape outlet opening 32 and inner volume;
- a generally semi-flexible measuring tape 14 housed within said tape housing 12 in a generally spiral configuration with an outer end extendable through said tape outlet opening 32;
- a tape end hook mounted on and depending from said outer end of said measuring tape 14;
- an extendable generally flat planar rear tail 16 having an outer end and an inner end, said rear tail 16 movably/pivotably mounted on said tape housing 12 generally opposite said tape outlet opening 32, said rear tail 16 operative to project outwards from said tape housing 12;
- an outer measurement displayed on said measuring tape 14 displaying the total extended distance of said measuring tape 14 from said outer end to said tape outlet opening 32;
- wherein said inner end of said rear tail 16 is hingedly mounted on said tape housing 12 generally adjacent the lower surface of said tape housing 12, said rear tail 16 pivotable between a retracted position generally adjacent said tape housing 12 and an extended position generally parallel with said outer end of said measuring tape 14 in the opposite direction therefrom;

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- wherein said inner end of said rear tail 16 is retractably mounted within said tape housing 12 with said outer end of said rear tail 16 extending partially outwards from said tape housing when said rear tail is housed within said tape housing 12 such that said outer end of said rear tail 16 may be engaged to withdraw said rear tail from said tape housing 12 thereby moving said rear tail 16 into an extended position generally parallel with said outer end of said measuring tape 14 in the opposite direction therefrom, as shown in Fig. 9; and
- wherein the hinged connection of said rear tail 16 includes stop means to restrict rotation of said rear tail 16 beyond an extended position wherein said rear tail 16 is generally parallel with said outer end of said measuring tape 14 for facilitation accurate measuring of inner measurements of objects to be measured.

Mosman lacks a forward tongue, and at least two sets of measurements including an outer measurement and an inner measurement displaying the total distance between the outer end of the rear tail and the outer end of the forward tongue.

With respect to the forward tongue: Betz discloses a tape rule, as shown in Fig. 1, having a generally flat planar tongue 15 having inner and outer ends, said inner end of said forward tongue 15 mounted on an outer end of a measuring tape 11 with said forward tongue 15 extending forwards therefrom, and a measurement displayed on said measuring tape 11 displaying the total distance between an outer end of a housing 10 and the outer end of the tongue 15. The forward tongue 15 is hingedly mounted on said outer end of said measuring tape

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11, and said tongue 15 can also be pivotable between a retracted position and an extended position, said hinge connection of said tongue 15 including stop means. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace with measuring tape 14 disclosed by Mosman with a measuring tape with a tongue and a measuring scale compensating for the length of the housing as taught by Betz, in order to facilitate the reading of inside measurements.

With respect to the at least two sets of measurements including an outer measurement and an inner measurement displaying the total distance between the outer end of the rear tail and the outer end of the forward tongue: Buck discloses a tape measure, as shown in Fig. 2, having at least two sets of measurements displayed on a measuring tape 1, an outer measurement of said at least two sets of measurements displaying the total extended distance of said measuring tape 1 from an outer end to a tape outlet opening, and an inner measurement 10 of said at least two sets of measurement displaying the total distance between an outer end of a rear tail 5 and an outer end of said measuring tape 1. Mosman is already suggesting that the inside measurement is obtained by adding the length of the tail 16, the length of the housing 12 and the length of the measuring tape 14, and Betz provides a scale for inside measurements including the distance of the housing. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to further modify the scale of the device disclosed by Mosman as modified by Betz by providing a scale having at least two sets of measurements, and outer measurement and inner measurement including the length of the tail and the length of the housing in order to facilitate the reading of inside measurements. Furthermore, it would have



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been obvious to include the length of the tail in the scale since Mosman is already suggesting that the length of the tail must be added when making inside measurements, and it would be obvious to provide a scale including the lengths of the tail, housing, tape and tongue in order to obtain a direct measurement.

6. Claims 4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosman (U.S. 4,977,684) in view of Betz (U.S. 3,087,251) and Buck (U.S. 2,022,756) as applied to claims 1-3, 5-7, 10 and 11 above, and further in view of Valentine, Sr. (U.S. 5,815,940).

Mosman as modified by Betz and Buck disclose all the subject matter claimed above in paragraph 5 with the exception of the tongue being pivotable between a retracted position in general parallel alignment with and contacting the measuring tape and an extended position.

With respect to the tongue being pivotable between a retracted position in general parallel alignment with and contacting the measuring tape and an extended position: Valentine, Sr. discloses a device, as shown in Fig. 5, having a measuring tape and a tongue 30 pivotable between a retracted position and an extended position, wherein in the retracted position said tongue 30 is in general parallel alignment with and contacting said measuring tape in order to be stored. Therefore, it would have been obvious to a person having ordinary skill in the art at the

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time the invention was made to modify the tongue disclosed by Mosman as modified by Betz and Buck by making it pivotable in a retracted position in general parallel alignment with and contacting the measuring tape, as taught by Valentine, Sr. in order to provide storage and protect the tongue.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bouchard et al. ('753) discloses a measuring device having two measuring tapes and two measurements scales. Goldman, Stowell et al. ('905), Starcevich, and Farrand disclose measuring devices having a tongue.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



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